

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
West Helena Broadcasters, Inc.	)	File Number: EB-07-OR-096
	)	
Licensee of KCLT-FM	)	NAL/Acct. No. 200832620002
West Helena, Arkansas	)	
	)	FRN: 0010279719
Facility ID # 71608	)	

**FORFEITURE ORDER**

**Adopted:** January 7, 2008

**Released:** January 9, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to West Helena Broadcasters, Inc. (“Broadcasters, Inc.”), licensee of station KCLT-FM, in West Helena, Arkansas, for willful and repeated violation of Sections 11.35 and 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Broadcasters, Inc.’s failure to have an operational Emergency Alert System (“EAS”) and failure to maintain and make available a complete public inspection file.

**II. BACKGROUND**

2. On August 22, 2007, in response to a complaint, an agent from the Commission’s New Orleans Office of the Enforcement Bureau (“New Orleans Office”) inspected station KCLT-FM’s main studio in West Helena, Arkansas accompanied by the station’s general manager. During the inspection, the EAS unit was set in manual mode, and the DJ who was responsible for running EAS tests was not present. The general manager was unable to run an EAS test to verify the EAS equipment was operational. All logs and printouts for the EAS, provided by the general manager the day of the inspection, were over a year old. The general manager could provide no evidence that the EAS had been operational after June 2006. In response to a request made during normal business hours, the general manager was only able to produce an old contour map and the most recent ownership report.

3. On August 23, 2007, an agent from the New Orleans Office monitored station KCLT-FM from 8:20 – 9:00 A.M. C.D.T. During this time, the agent did not hear an EAS test broadcast by the station. After arriving at the main studio at 9:00 A.M. C.D.T., the general manager stated that the station conducted an EAS test at 8:30 A.M. C.D.T. and was unable to run another test because he hit a button preventing activation of the EAS. At 9:10 A.M., the general manager provided the printout for the test run earlier that morning. The time on the printout was listed as 9:30 A.M., but the general manager stated the time was an hour off. The agent also asked to inspect the station’s public inspection file. The general manager was able to produce a copy of the current station authorization, the old contour map and the ownership report, but he had been unable to locate any other documents from the station’s public inspection file.

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<sup>1</sup> 47 C.F.R. §§ 11.35, 73.3526.

4. On November 14, 2007, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Broadcasters, Inc. in the amount of eighteen thousand dollars (\$18,000) for the apparent willful and repeated violation of Sections 11.35 and 73.3526 of the Rules.<sup>2</sup> Broadcasters, Inc. submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture based on its inability to pay.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Broadcasters, Inc.’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

6. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station’s log why any required tests were not received and when defective equipment is removed and restored to service.<sup>6</sup> On August 22, 2007, station KCLT-FM was unable to run an EAS test. The most recent EAS printout for the station was dated June 2006, and the station had no evidence that its EAS was operational after June 2006. On August 23, 2007, station KCLT-FM transmitted an EAS test but the test was not broadcast over the air.

7. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>7</sup> Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.<sup>8</sup> Section 73.3526(e) of the Rules specifies the material to be retained in the public inspection file.<sup>9</sup> On August 22 and 23, 2007, in response to requests made during regular business hours, station KCLT-FM’s general manager was unable to locate or make available a complete public inspection file. He was only able to locate an old contour map, an ownership report, and the current station authorization.

8. Thus, based on the evidence, we find that Broadcasters, Inc. willfully<sup>10</sup> and repeatedly<sup>11</sup>

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<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832620002 (Enf. Bur., New Orleans Office, November 14, 2007) (“*NAL*”).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 C.F.R. § 11.35(a) and (b).

<sup>7</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>8</sup> 47 C.F.R. § 73.3526(c)(1).

<sup>9</sup> 47 C.F.R. § 73.3526(e).

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or

violated Sections 11.35 and 73.3526 of the Rules by failing to have operational EAS and failing to maintain or make available a complete public inspection file.

9. In its response to the *NAL*, Broadcasters, Inc. asserts that a \$18,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>12</sup> After reviewing Broadcasters, Inc.'s financial documentation, we conclude that a reduction of the forfeiture to \$7,000 would be appropriate.

10. We have examined Broadcasters, Inc.'s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Broadcasters, Inc. willfully and repeatedly violated Sections 11.35 and 73.3526 of the Rules. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$7,000 is appropriate based on Broadcasters, Inc.'s demonstrated inability to pay.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, West Helena Broadcasters, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Sections 11.35 and 73.3526 of the Rules.<sup>13</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>15</sup>

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regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>12</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.3526.

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to West Helena Broadcasters, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau